IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI.

SECOND APPEAL NO. 28 OF 2006.

Shri Agnelo D' Costa,
aged about 45 years, married,
resident of Madel, Sernabatim,
Margao. ..... Appellant

V e r s u s

Smt. Adelina Gonsalves,
wife of John Gonsalves,
Housewife, resident of House
No.195/1, Madel, Sernabatim,
Salcete, Goa. ..... Respondent

Mr. S. S. Kakodkar, Advocate for the Appellant.

Mr. F. M. Reis, Advocate with Mr. D' Silva, Advocate for the Respondent.

CORAM: R. S. MOHITE, J.

DATE: 21st September, 2007.

ORAL ORDER

This Second Appeal is filed against concurrent findings of both the lower Courts decreeing the plaintiff's suit and granting permanent injunction against the defendants, their relatives, agents and servants from extending their dwelling house in the suit property or from carrying on any construction encroaching upon the suit access in any manner.

2. The suit access referred to in the impugned decree was the access which has been mutually agreed. It appears that the Appellate Court clarified the aspect of the nature of access to be given to the plaintiff and since in purchase proceedings parties have mutually agreed that the access should be of three metres, the consent Order passed by the Deputy Collector at exhibit 46 before the Trial Court and which provided for three metres wide access, was referred to in Para 9. It appears that the only controversy now pending before the Deputy Collector in the purchase proceedings, is the exact location of that road. In that matter, through Survey Officer, a road was marked out but an appeal in that regard is pending. It is sought to be contended that since the dispute arising from exhibit 46 is not sorted out, there arises a substantial question of law. This position is not correct. This Court in the reported Judgment in the case of ***Smt. Rachel Rato @ Rachel D' Souza & Ors. v. Smt. Inacinha Carvalho & anr. (1998(1) G.L.T. 212),*** has laid down that the right to purchase area around the house does not create any right in favour of the mundkar to cause extension or encroachment or construct in the said area, unless and until certificate of transfer of ownership is issued by Collector under the Mundkar Act, on payment of price.

3. It is only clarified that the permanent injunction which is granted, will not operate in the purchased area after the issuance of

certificate of ownership by the Collector under the Mundkar Act and on payment of price. Within the purchased area, the appellant will be permitted to construct according to law. Subject to this observation, Second Appeal is dismissed. The dismissal of this appeal will not preclude the Revenue Authorities from fixing the three metres wide access as per the Consent Order dated 08.01.2002, which was at exhibit 46 in the record of the suit.

R. S. MOHITE, J.

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